IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

TUESDAY, THE 3RD APRIL 2007 / 13TH CHAITHRA 1930

WP(C).No. 14208 of 2006(S)

OA.149/2004 of CENTRAL ADMINISTRATIVE TRIBUNAL,ERNAKULAM BENCH
.....

PETITIONER:

UNION OF INDIA,
REP. BY THE SECRETARY TO THE GOVT. OF INDIA,
MINISTRY OF SHIPPING, ROAD TRANSPORT AND HIGHWAYS,
DEPARTMENT OF SHIPPING, TRANSPORT BHAVAN,
NEW DELHI-1.

BY ADV. SRI.TPM.IBRAHIM KHAN,SENIOR PANEL COUNS

RESPONDENTS:
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1. SH.MANNATTIL KUMAR,
S/O.LATE A PARAMESWARAN NAIR,
RETIRED STENO GRADE-II, TO THE THEN MINISTRY OF
SURFACE & TRANSPORT, RESIDING AT "MANNATTIL,
89-JAWAHAR NAGAR, KOCHI-20.

2. THE CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH, KOCHI-682 017.

BY ADV. SRI.T.C.GOVINDA SWAMY FOR R1
SRI.P.NPANKAJAKSHAN PILLAI

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 03/04/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WP(C).No. 14208 of 2006(S)

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: COPY OF THE ORIGINAL APPLICATION NO.149/2004 ALONG WITH ITS ANNEXURES FILED BY THE FIRST RESPONDENT BEFORE THE SECOND RESPONDENT - CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXT.P2: COPY OF THE REPLY STATEMENT FILED ON 13.4.2004 BY THE PETITIONER IN ORIGINAL APPLICATION NO.149/2004 BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

EXT.P3: COPY OF THE ORDER DATED 15.7.2005 PASSED BY THE LEARNED CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH, IN EXHIBIT P1 ORIGINAL APPLICATION NO.149/2004.

EXT.P4: COPY OF DEPARTMENT OF PERSONNEL AND TRAINING O.M.NO.2/29/91-ESTT (PAY-II) DATED 05.01.1994, GOVERNING TERM & CONDITION OF TANSFER OF CENTRAL GOVERNMENT EMPLOYEES ON DEPUTATION/FOREIGN SERVICE TO EX-CADRE POSTS UNDER CENTRA;/STATE GOVT./PSU/AUTONOMOUS BODIES ETC. AMD VICE VERSA.

EXT.P5: COPY OF THE REPRESENTATION DATED26.12.2002 OF RESPONDENT NO.1.

EXT.P6: COPY OF DEPARTMENT OF PERSONNEL AND TRAINING'S O.M.NO.2/8/97 DATED 11.3.1998 GOVERNING FIXATION OF PAY OF EMPLOYEES APPOINTED ON THE PERSONAL STAFF OF MINISTER INTER ALIA INDICATING THAT THESE APPOINTMENTS ARE MADE ON DEPUTATION BASIS AND SUCH EMPLOYEES ARE ELIGIBLE TO RECEIVE DEPUTATION DUTY ALLOWANCE.

EXT.P7: COPIES OF FEW APPOINTMENTS MADE IN THE PERSONNEL STAFF OF THE MINISTER INDICATING THAT SUCH APPOINTMENTS ARE CONTERMINUS IN NATURE.

EXT.P8: FIXATION OF PAY, WHEN A GOVERNMENT SERVANT IS APPOINTED IN OFFICIATING CAPACITY I.E., FR 49 & FR 33.

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BKN // TRUE COPY//

P.A. TO JUDGE.

J.B.KOSHY & T.R.RAMACHANDRAN NAIR, JJ.

W.P.(C).NO. 14208 OF 2006

Dated this the 3rd day of April, 2007.

JUDGMENT

Koshy, J.

This writ petition is filed challenging Ext.P3 order of the Central Administrative Tribunal. The above order was passed at the instance of the respondent. He was a Central Government pensioner. He entered the service of the Government as a member of Central Secretariate Service in 1956 and he retired on 28.2.1975. After his retirement he was absorbed in a Public Sector Undertaking, namely, Cochin Shipyard Limited. From 1969 onwards, he was working as Additional Private Secretary to the Minister in the scale of pay of Rs.840-1200. He retired from the post and he was granted pension also accordingly. But later, orders were issued revising the scale retrospectively to reconsider the alleged excess in payment of pension. He approached the Tribunal. According to Government, even though he was working as Additional Private Secretary, his substantial post was Stenographer Grade II. Hence pension can be calculated taking the scale of Stenographer Grade II. On evidence the Tribunal found that from 1969 onwards he was working as Additional Private Secretary and that was not on deputation basis and salary was drawn on consolidated fund. No deputation allowance was paid. Respondent was actually working in the grade of Private Secretary till his retirement in 1975 in the scale of pay applicable to Private

Secretary. There is no erroneous fixation of pension. It is not disputed that for more than 6 years before his retirement, he was working as Additional Private Secretary and he was drawing salary from the consolidated fund and deputation allowance was not paid to him. On the facts of the case Tribunal found that his pension as originally fixed needs no change and reconsideration cannot be made. The above finding is based on evidence and there is no perverse finding or patent illegality. Hence, we are not interfering with the order of the Tribunal using power under Article 226 of Constitution of India.

Writ Petition is dismissed.

J.B.KOSHY, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

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